

M **Michigan Law**
UNIVERSITY OF MICHIGAN LAW SCHOOL
CHILD ADVOCACY LAW CLINIC

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Representative Mark Meadows, Chair
House Judiciary Committee
S1088 House Office Building
124 N. Capitol Ave
Lansing, MI 48933

Re: HB 4535

Dear Representative Meadows:

I write to ask you to support Representative Pam Bynes' bill to amend Section MCL 712A.19b(3)(m) of Michigan's Juvenile Code. I would attend Wednesday's committee meeting, but unfortunately I have to be in court in the morning with law students and am teaching a class in the afternoon. I would be very happy to meet with members of your staff or otherwise respond to any questions that arise.

Section MCL 712A.19b(3)(m) is grounds for terminating parental rights that has had unintended consequences that are counter-productive to the overall goals of preserving families, protecting children and achieving permanency for children. This provision: 1) inhibits cooperative, voluntary planning for a child's future, particularly within the extended family; 2) discourages non-adversarial resolution of cases; 3) is unnecessarily punitive; and 4) is unnecessary to accomplish termination in the case of the chronic abusive or neglectful parent, because other provisions of law adequately cover such cases.

I have practiced law in this field for over 30 years and before that was a child protective services and foster care caseworker for the department of social services. Our Child Advocacy Law Clinic, which started in 1976, is the oldest clinical law program in the country specializing in matters of child abuse and neglect. We represent children alleged to be abused or neglected (mostly in Genesee county); the county DHS (as *of Counsel* to the county prosecutor, mostly in Jackson and Monroe bringing TPR cases); and parents accused of child maltreatment (in Washtenaw and Wayne). Representing the three major parties as we do develops a fairly objective overview of child welfare policy and procedure. We also experience what happens at the trial level in a way that is not reported and generally does not find its way into the formal court record.

Section 19b(3)(m) inhibits cooperative voluntary planning for a child's future, particularly within the extended family. Many times a good resolution of a child protection case is for a parent, commonly a young parent, to release parental rights to a grandparent, another relative, or to the Department of Human Services. Having the strength and courage to recognize one's limitations shows a certain level of maturity and can itself be an act of love for the child. A cooperative resolution generally gets a good result for the child and is very efficient in that it can avoid very difficult and prolonged legal proceedings. However, once the parent's lawyer informs an otherwise willing parent of the potential consequences of a voluntary release, as the lawyer is duty-bound to do, any chance of cooperative solution vanishes.

This provision also discourages non-adversarial resolution of cases. Prior to the enactment of 19b(3)(m), parents had an incentive to resolve a case (and plan for their child) through voluntary release. A parent could agree to voluntarily terminate their rights to a current child without serious consequences to future children. Everyone avoided a contested termination of parental rights hearing, which can be lengthy and difficult. But under the current law the parent contemplating release must understand that yielding their parental rights to another means that the state may have grounds to terminate their rights to future children and that, if there is any substantiation of child abuse or neglect in the future, the DHS is required to file a mandatory petition for termination of parental rights. While release of parental rights might be desirable for the immediate child, the risk to future children is very great and the parent is discouraged from non-adversarial resolution.

The current provision is also unduly punitive. We have seen cases where a parent's rights were terminated when the parent was very young, -- 17, 18 and as young as 14 --under circumstances that most reasonable persons would say were understandable and hardly blameworthy. Yet if they come to the attention of authorities later they face a mandatory petition and clear grounds to terminate their parental rights. In one of our cases a mother and her children came to the attention of DHS based on the abuse by the father, for which she could not be held responsible. The DHS was nonetheless required to file a petition covering the children and asking for termination of parental rights. It is possible to persuade a court to use its discretion not to terminate because it is not in the child's best interests, but legally that can be a very weak argument.

Finally, this section (m) is not really necessary to cover the case of the chronic abusive or neglectful parent whose inability to parent is clearly established. HB 4535 continues to permit future termination of parental rights based on a voluntary release in the most egregious circumstances such as murder, sexual abuse, and serious physical abuse, where most would agree that such a person would not be a fit parent for any future child.

In addition to those safeguards, the current statute contains many other grounds for termination of parental rights that are going to cover circumstances that warrant the dramatic step of terminating parental rights of a person whose past conduct demonstrates

an inability to parent. Section 712A.19b(3)(b) allows for termination “if a child or *a sibling of the child* has suffered physical injury or physical or sexual abuse”.

Section 712A.19b(3)(i) and (l) provide grounds for TPR if a parent’s rights to another child were terminated. A prosecutor or child’s lawyer guardian ad litem, or the court need not accept a voluntary release in situations where the safety of subsequent children could be compromised.

The Michigan law doctrine of “anticipatory neglect” probably provides the most comfort for the person concerned that there would be no remedy against the truly bad parent who avoids responsibility by releasing a child under the adoption code, thus avoiding a termination of rights under the juvenile code. If that person then has a subsequent child, Michigan law is clear that how a person has treated other children is admissible on the question of neglect of a subsequent child. There does not need to be an adjudication of those earlier facts; the facts are deemed relevant and the evidence can be subsequently offered and admitted. This doctrine, generally called “anticipatory neglect” is widely used in Michigan child welfare proceedings. (Dittrick, LaFlure).

So, the paradigm case of a person who has demonstrated an inability to parent in a culpable way is covered by other provisions of law. If a person has indeed seriously failed as a parent, the court can use the past failures as evidence and even use that failure as a separate legal basis for TPR of subsequent children. Michigan can safely permit a parent to voluntarily accept a termination of rights when in the interests of the child and thus provide for their own child and avoid a contested adversarial hearing.

I urge you to support HB 4535. If I can expand on my concerns about this provision or answer any other questions, please contact me. I would be happy to discuss this matter with you, other legislators, or any one of your staff.

Of course, this opinion is my own and does not necessarily represent the views of the University, the Law School or any of my colleagues.

Sincerely,



Donald N. Duquette
Clinical Professor of Law and Director
Child Advocacy Law Clinic

cc. Representative Pamela Byrnes, Members of House Judiciary Committee